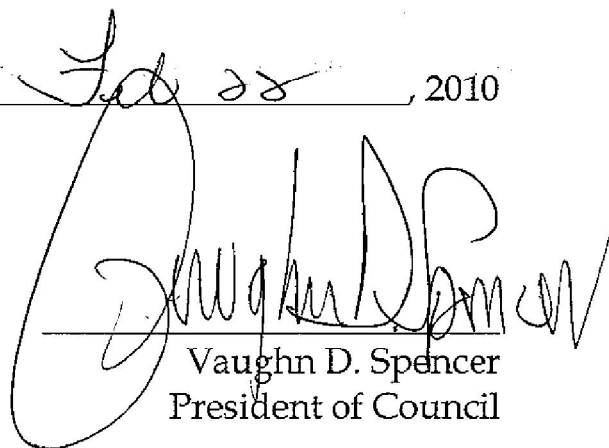


RESOLUTION NO. 24 2010

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS
FOLLOWS:

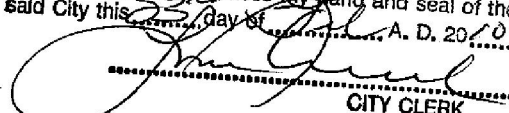
Denying the Conditional Use application submitted by 1039 Penn LLC, Ryan
Foreman owner, for the expansion of the number of rental units at 1041 Penn
Street, as attached in the Findings of Fact and Conclusion of Law.

Adopted by Council Feb 28, 2010


Vaughn D. Spencer
President of Council

Attest:


Linda A. Kelleher
City Clerk

I, LINDA A. KELLEHER, City Clerk of the City
of Reading, Pa., do hereby certify, that the fore-
going is a true and correct copy of the original
Resolution passed by the Council of the City of
Reading, on the 28 day of Feb.
A. D. 2010. Witness my hand and seal of the
said City this 23 day of Feb. A. D. 2010.

CITY CLERK

IN RE: APPLICATION OF 1039 PENN, LLC	:	BEFORE THE CITY COUNCIL
BY RYAN FOREMAN	:	OF THE CITY OF READING,
RELATIVE TO A PROPERTY	:	PENNSYLVANIA
LOCATED AT 1041 PENN STREET	:	
READING, BERKS COUNTY,	:	CONDITIONAL USE
PENNSYLVANIA	:	CONVERSION INCREASE
	:	NUMBER OF UNITS

**DECISION OF THE CITY OF READING
CITY COUNCIL ON A CONDITIONAL USE APPLICATION**

AND NOW, this 22nd day of February, 2010, a hearing have been held on January 6, 2010, upon the application of 1039 Penn LLC by Ryan Foreman, notice of such hearing having been first sent, posted and advertised in accordance with the provisions of the Pennsylvania Municipalities Planning Code and the City of Reading Zoning Ordinance, as amended, the City of Reading City Council (hereinafter "Council") renders the following decision:

FINDINGS OF FACT

City Council finds the following facts:

1. The Applicant is 1039 Penn, LLC, a limited liability company, by and through Ryan Foreman (hereinafter referred to as "Foreman") and Shawn Smith (hereinafter referred to as "Smith"), with a registered office address of 609 N Clarion Street, Philadelphia, Pennsylvania, 19147 (hereinafter referred to as "1039 Penn, LLC").
2. Applicant was the fee simple owner of the property of 1041 Penn Street (hereinafter referred to as "1041 Penn" or "Subject Property") at the time of application.
3. The Subject Property is located in the R-3 Zoning District as that term and district is defined by the City of Reading Zoning Ordinance, as amended, (hereinafter referred to as "Zoning Ordinance").
4. Applicant is seeking a Conditional Use for a conversion of the Subject Property per §27-1203.4 of the City of Reading Zoning Ordinance.
5. Applicant seeks a conversion to permit two additional units to a five unit apartment building creating a seven unit apartment building.
6. Applicant testified that the Subject Property is a three story structure consisting of a structure which contains seven (7) apartment units with individual bathrooms, kitchens and bedrooms with two units on the first floor, three on the second floor and two on the top floor.
7. Applicant Smith testified initially that they sold the property then subsequently testified that it was almost sold.
8. Documentation in zoning file that at the time of the hearing Applicant was no longer fee simple owner nor had an equitable interest in the Subject Property.
9. Applicant Smith testified that the rehabbed the Subject Property along with 1039 Penn about two years ago.
10. It was further testified to by Applicant Smith that the Subject Property was a real mess and you could not really tell, definitely how many units there were in the Subject Property before.
11. Applicants filed the Conditional Use application seeking a conversion of the Subject Property to seven (7) units from five (5) units.

12. The Subject Property, per the testimony of Applicant Smith that it looked like there were seven units but that they subsequently discovered it was zoned for five units.

13. Applicant Foreman testified that they did not alter any walls or room configurations and the Subject Property had seven front doors and seven exits.

14. Applicant Smith testified that it was rehab to the bathrooms, kitchens, new sheetrock, repair dilapidated wall, electrical, plumbing no structural changes.

15. Applicants did not have any discussion with the prior owner about the zoning for the Subject Property.

16. Applicant provided a full size site plan.

17. Applicant Smith testified they pulled building permits for the sheetrock, electrical and other stuff.

18. Applicant Smith testified that all the apartments meet the minimum square footage for the type of apartment.

19. Applicant Smith did not answer if the City Zoning Officer approved the square footage.

20. Applicant Smith did not present any documentation or testimony calculating the square footage of each unit.

21. The City of Reading Zoning Ordinance provides minimum square footage for apartments and units converted as a Conditional Use.

22. Applicant Smith testified that they own residential properties in Philadelphia.

23. Applicant Forman stated that they are familiar with checking zoning for properties in Philadelphia.

24. Applicant Forman testified that they did not check the zoning of the Subject Property with the City of Reading rather they purchased the Subject Property because of the discounted price assuming that there seven units.

25. Applicants purchased the Subject Property without inquiring of the City of Reading the permitted number of apartments.

26. Applicants rehabbed the Subject Property without inquiring of the City of Reading the permitted number of apartments.

27. Applicants could not definitively testify as to the number of parking spaces delegated to 1041 Penn Street. Applicant Smith initially testified there were 23 parking spaces then 21 to share between 1039 and 1041 Penn. He then testified there 9 then 11 then 12 parking spaces on the side for 1041 Penn.

28. The site plan identifies only 9 parking spaces dedicated to 1041 Penn Street.

29. The Zoning Ordinance requires a minimum of 1.5 off street parking spaces per unit for a conversion to obtain a Conditional Use.

30. The Zoning Ordinance requires at least 10.5 parking spaces for 7 units as a Conditional Use.

31. There was no evidence presented that at least 1.5 off street parking spaces per unit, 10.5 spaces, were assigned for exclusive use for 1041 Penn Street.

32. Applicant testified that there are seven water heaters and electrical meters for the Subject Property.

33. Applicant presented no exhibit or documentation that all plumbing, heating and electrical equipment and facilities are adequate and appropriate for seven units in the Subject Property.

34. The Zoning Ordinance requires documents that all plumbing, heating and electrical equipment and facilities are adequate and appropriate for the proposed use.

35. Applicant testified that the property could be converted back to a five unit building.

36. Neighbor the Subject Property, Lynn Christy, testified in opposition to the conversion.

DISCUSSION

Applicant requests a Conditional Use to undertake a conversion of the Subject Property located in a R-3 Residential Zoning District to obtain an additional two permitted units to a five unit apartment building thereby creating a seven unit apartment building. Applicant has not met the requisite criteria per the City of Reading Zoning Ordinance for a conversion as a Conditional Use in the R-3 Residential Zoning District.

CONCLUSIONS OF LAW

1. The Subject Property is located in the R-3 Zoning District.
2. Applicant was not the owner at the time of the January 6, 2010 hearing, contrary to testimony, and thus did not have standing.
3. Applicant requests a Conditional Use to convert a five unit apartment building to a seven unit apartment building.
4. The burden of proof in an application for a Conditional Use is upon the Applicant.
5. City of Reading City Council is permitted to grant Conditional Uses and other relief as set forth in the Zoning Ordinance of the City of Reading and Pennsylvania Municipalities Planning Code.
6. The requirements for a conversion as a Conditional Use in a R-3 Zoning District are set forth in §27-1203.4 of the City of Reading Zoning Ordinance.
7. In order to grant the relief, Applicant must show that it has satisfied §27-1203.4 of the City of Reading Zoning Ordinance.
8. Applicant failed to meet the burden of proof to meet the requirements of conversion as a Conditional Use as set forth in §27-1203.4 of the City of Reading Zoning Ordinance. Specifically, Applicant failed to prove:
 - a. The minimum floor area of each unit met the requirements as set forth in §27-1203.4.B;
 - b. There was at least 1.5 off street parking spaces delegated to each unit of the Subject Property per §27-1203.4.C; and
 - c. All plumbing, heating and electrical equipment and facilities were adequate and appropriate for a seven unit apartment building as required by §27-1203.4.D.
9. Applicant did not file an application for a non-conforming use or other relief from the Zoning Hearing Board for the City of Reading thus the history of the property is irrelevant.
10. The Subject Property may be used as a five unit apartment building in conformance with the Zoning Ordinance and permitted history thereof.

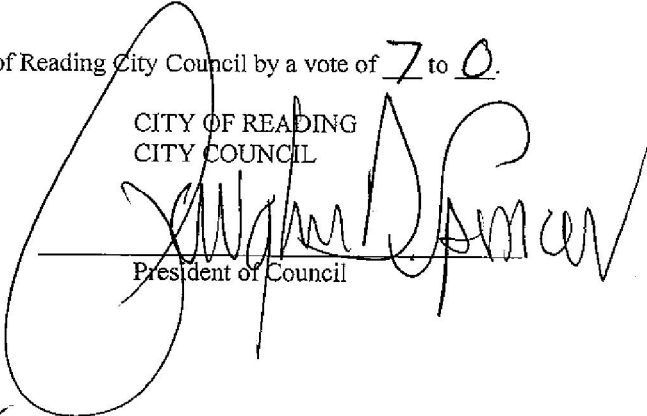
DECISION

After reviewing the Applicant's request in detail and hearing testimony, City Council enters the following decision:

Applicant is hereby denied a Conditional Use for a Conversion of the Subject Property because Applicant failed to meet the requirements therefor pursuant to the City of Reading Zoning Ordinance. Further, the Subject Property can be used in accordance with the terms of the Zoning Ordinance.

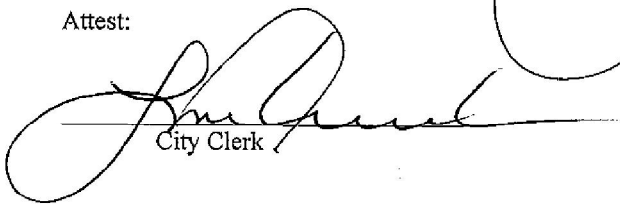
This is the decision of the City of Reading City Council by a vote of 7 to 0.

CITY OF READING
CITY COUNCIL



President of Council

Attest:



City Clerk